

Beijing Convention on Aviation Terrorism – issues for carriers

The Beijing Convention on the Suppression of Unlawful Acts relating to International Civil Aviation aims to modernise existing law on terrorism. Although the Convention should address jurisdiction issues, there are concerns that it may extend criminal liability to the directors of airlines



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The Beijing Convention on the Suppression of Unlawful Acts relating to International Civil Aviation of 2010 entered into force on 1 July 2018 after ratification by the 22nd State to ratify, accept or accede to the Convention, which in this case was Turkey. The Protocol supplementary to the Convention surprisingly entered into force before the Convention itself, on 1 January 2018, having achieved the required number

of accessions/ratifications in advance of the Convention itself. The Convention and Protocol are deemed by the Convention to be in force in a number of European countries including France, the Czech Republic, Malta, the Netherlands and Switzerland. Domestic laws in those countries will determine when and how the Convention is given effect. A number of other countries have signed the Convention, including the US, UK, China and South Korea but have not yet taken any steps to ratify or accede to it. Accordingly, though it is in force in certain States to the extent domestic law in those States permits, it is by no means yet routinely applicable. Against this background, however, it must be borne in mind that Conventions usually take many years to enter into force and be applicable in a majority of States. The fact that the Beijing Convention entered into force a mere seven years after having been agreed at the Diplomatic Conference in fact represents a comparative degree of diplomatic urgency.

New forms of terrorism

The Convention and Protocol modernise existing law on terrorist acts against civil aviation to take account of the act of using civil aircraft as weapons, the transport of toxic chemicals, radioactive material, nuclear material and enriched uranium as well as biological, chemical and nuclear weapons, and the use of technological means such as hacking to take control of aircraft and air traffic control systems.

Prosecution for terrorist attacks on civil aviation has often been difficult because of the need to establish jurisdiction over the offence in the courts of any particular State. The Protocol addresses this by requiring each State which is party to the system to modify its laws so that any of its citizens who commit an offence must be susceptible to prosecution within its jurisdiction. In addition to this, no State party can refuse to extradite an offender simply on the basis that their offence was political in nature. Finally, each State party is required to establish a jurisdiction in its national

court to try criminal charges against an offender if one of the victims of the offence is one of its citizens. It is relatively groundbreaking for an international convention to address domestic criminal jurisdiction in this way. In international aviation, experience has shown that, because of lack of domestic jurisdiction, courts are very often unable to try persons accused of offences taking place during the course of international carriage by air, unless those offences occurred in the airspace of the concerned State itself. The Beijing Convention therefore seeks to facilitate prosecutions by creating new jurisdictions in domestic criminal courts by reference to the State of the accused and the State of the victim. However, it will also be appreciated that there will be a reluctance on the part of some States to allow their citizens to be extradited to, and prosecuted in, the criminal courts of certain other States. For example, States with a history of opposition to the death penalty will be unlikely to agree to extradition to a State which embraces capital punishment. Additionally, where States are

accused of participating in the terrorist activity, by, for example enabling the transport of radioactive or toxic biological material, they may be unlikely to agree to the extradition of their citizens for prosecution in the States in which their victims were citizens.

Airline liability

While the principal focus of the Beijing system is to criminalise terrorists, there are concerns that the language of the Convention and Protocol may extend criminal liability to the directors and officers of airlines which inadvertently carry dangerous goods either as a result of misdescription or pursuant to whole aircraft charters to governments. The Convention does not apply to States but this exclusion does not extend to the civil operators of aircraft chartered by States. IATA lobbied for a defence if the carrier complied with the ICAO Dangerous Goods Regulations but this was not accepted at the Conference. The concerns of carriers are, therefore, that carriage of cargo on behalf of a government or the inadvertent carriage of prohibited material could give rise to prosecution of an airline, its directors and officers.

The Convention and Protocol are not yet widely implemented and it is unclear whether and when there will be further ratifications. It would plainly be wise for airlines to reinforce their procedures to ensure strict compliance with Dangerous Goods Regulations and to ensure that their corporate criminal defence strategy protects directors, officers and employees against defence costs associated with prosecutions. In addition, sense-checking

charter agreements with governments with these risks in mind would seem to be appropriate. ■

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